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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/528,786	03/23/2005	Wolfgang Rohrl	1703 1346US	6316

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D-70032 STUTTGART,  
GERMANY

EXAMINER

CRAIG, PAULA L

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 06/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/528,786	Applicant(s) ROHRL, WOLFGANG	
	Examiner Paula L. Craig	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2005 and 25 April 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 19-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 March 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/23/05</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "24" has been used to designate both a closing means and a side section, and reference character "18" has been used to designate both an absorptive body and a longitudinal edge section. See specification, page 8 and Abstract. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 17 and 23 (see Fig. 3). Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

2. The abstract of the disclosure is objected to because it contains more than 150 words. Correction is required. See MPEP § 608.01(b).

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 23 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear ~~whether or not~~ <sup>which one of the</sup> the limitations "not more than 1.6 times, or 1.5 times" are part of the claimed invention, ~~or not~~.

***Claim Rejections - 35 USC § 102/103***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 19-27 are rejected under 35 U.S.C. 102(a) as being anticipated by, or in the alternative under 35 U.S.C. 103(a) as obvious over U.S. Patent Application Publication No. 2003/0032933 to Sayama.

9. For Claims 19 and 21, Sayama teaches an open-type disposable diaper. The diaper has a front area, a rear area, and a center area disposed between the front and rear areas, with the center area coming to rest in a crotch region of the user (Figs. 1-6 and paragraphs 4-5). The diaper includes first closing means disposed on side sections of the front area (upper tape fasteners 21, Figs. 3-6 and paragraphs 17-18). A first impact means is disposed to cooperate with the first closing means during use of the diaper, the first closing means cooperating with the first impact means in an adhesive or mechanical fashion to close the diaper (upper target tape strips 31, Figs. 3 and 5 and Paragraphs 17-18). A second closing means is disposed on side sections of the rear area, with the second closing means displaced in a longitudinal direction away from the first closing means to be further removed from a hip edge region of the diaper than the first closing means (lower tape fasteners 22, Figs. 3-6 and paragraphs 17-18). Sayama teaches a second impact means disposed to cooperate with the second closing means

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during use of the diaper, the second closing means cooperating with the second impact means in an adhesive or mechanical fashion to close the diaper (lower target tape strips 32, Figs. 3 and 5 and paragraphs 17-18). Sayama teaches that the second closing means has a greater area than the first closing means (Figs. 3-6). Sayama teaches that the first and second closing means may be formed from tape or mechanical fastener (paragraph 15). Sayama teaches that the force encountered by the diaper is greater for the second closing means than the first closing means (paragraphs 3 and 16-17 and Claim 1). A larger area of fastener is indicated by Applicant to be suitable for creating a larger force for releasing the second closing means (specification, page 3). Therefore, absent evidence to the contrary, the second closing means taught by Sayama is presumed to have an adhering bond releasable only by a force which is larger than the same force for the first closing means. This configuration is inherent in Sayama. The burden to show that this, in fact, is not the case is shifted to Applicant as per *In re Fitzgerald*, 619 F.2d 67, 70, 205 USPQ 594, 596 (CCPA 1980). The diaper of Sayama is fully capable of use by adults. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987), and *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967).

10. For Claim 20, Sayama teaches the first and second closing means being disposed proximate longitudinal edge sections of the front or rear area (Figs. 3-6).

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11. For Claim 22, Sayama teaches the adhering area of the second closing means being at least 1.2 times the active adhering area of the first closing means (Figs. 4 and 6).
12. For Claim 23, Sayama teaches the larger adhering area of the second holding means being between 1.2 and 2 times larger than the active adhering area of the first closing means (Figs. 4 and 6).
13. For Claim 24, Sayama teaches in the longitudinal direction of the diaper a dimension of an active adhering area of the second closing means being larger than a dimension of an active adhering area of the first closing means (length of the tape fasteners, Figs. 4 and 6).
14. For Claim 25, Sayama teaches in the longitudinal direction of the diaper a respective dimension of the active adhering area of the first and second closing means substantially corresponds to a respective longitudinal dimension of the first and second closing means (Figs. 4 and 6).
15. For Claim 26, Sayama teaches a longitudinal dimension of the second closing means being larger than a longitudinal dimension of the first closing means (Figs. 4 and 6).
16. For Claim 27, Sayama teaches a dimension of an active adhering area of the second closing means in a transverse direction of the diaper substantially corresponds to a dimension of an active adhering area of the first closing means in the transverse direction (width of the tape fasteners, Figs. 4 and 6).

***Claim Rejections - 35 USC § 103***

17. Claims 28-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sayama '933.

18. For Claims 28, 29, and 30, Sayama does not teach in the longitudinal direction of the diaper the second closing means having a dimension of 24 to 55 mm or 30 to 40 mm; or the first closing means having a dimension of 20 to 35 mm or 20 to 30 mm; or a separation between the first closing means and a hip edge of the diaper being 10 to 50 mm. The size of the diaper and its fasteners, as well as the separation of the first closing means from the hip edge, are result effective variables, since they affect the fit of the diaper to the user's body. The discovery of an optimum value of a result effective variable is ordinarily within the ordinary skill in the art. See *In re Boesch and Slaney*, 205 USPQ 215 (CCPA 1980).

19. For Claim 31, Sayama teaches the first and second closing means being separated by some distance both before the diaper is assembled and when the diaper is worn (Figs. 3-6). Sayama does not teach in the longitudinal direction a separation between the first and second closing means of 70 to 150 mm. The separation between the first and second closing means is a result effective variable, since it affects the fit of the diaper to the user's body. The discovery of an optimum value of a result effective variable is ordinarily within the ordinary skill in the art.

20. For Claims 32-37, Sayama does not teach that as measured in a removal test as a maximum shearing force between the second closing means and the second impact section, a second force at which an adhering bond between the second closing means



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and the second impact section being released is at least 45 N, the second force being not more than 105 N, the second force being between 55 N and 95 N; or between the first closing means and the first impact section, a first force at which an adhering bond between the first closing means and the first impact section is released is at least 38 N, the first force is not more than 60 N, or the first force is between 40 N and 55 N. The force required for release is a result effective variable, since it affects the force required to release the first and second closing means. The discovery of an optimum value of a result effective variable is ordinarily within the ordinary skill in the art.

### ***Conclusion***

21. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 6,454,751 to Olson shows a diaper having a second closing means with a larger adhering area than a first closing means, as well as further from the hip edge, whether the diaper is being worn or not. U.S. Patent No. 6,641,568 to Ashton et al. shows a diaper having a second closing means with a larger adhering area than a first closing means. The remaining prior art references listed on the accompanying Form PTO-892 show the general state of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paula L. Craig whose telephone number is (571 )272-5964. The examiner can normally be reached on 8:00AM-4:30PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Paula L Craig  
Examiner  
Art Unit 3761

PLC

TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

A handwritten signature in black ink, appearing to read 'Tatyana', is written over the printed name and title of the Supervisory Primary Examiner.